

HOUSE BILL REPORT

2SHB 2603

As Passed House:
February 15, 2010

Title: An act relating to violations of state law or agency rule by small businesses.

Brief Description: Requiring agencies to give small businesses an opportunity to comply with a state law or agency rule before imposing a penalty.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Smith, Kenney, Bailey, Quall, Morris, Blake, Anderson, Chase, Kelley, Short, Appleton, Sullivan, Dammeier, Upthegrove, Klippert, Chandler, Kristiansen, Rolfes, Pearson, Roach, Parker, Morrell, Haler, Walsh, Orcutt, Johnson, Liias, Hunt, Probst, Ericksen, Moeller, Kretz, Sells, Hope, Herrera and Warnick).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/22/10, 1/29/10 [DPS];

Ways & Means: 2/8/10, 2/9/10 [DP2S(w/o sub SGTA)].

Floor Activity:

Passed House: 2/15/10, 98-0.

Brief Summary of Second Substitute Bill

- Requires agencies to provide small businesses with a copy of the state law or agency rule being violated and to allow a period of at least two business days for the small business to correct the violation before a fine, a civil penalty, or an administrative sanction is imposed.
- Changes the definition of a small business.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst, Miloscia and Taylor.

Staff: Marsha Reilly (786-7135).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Affairs. Signed by 19 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Ross and Seaquist.

Minority Report: Do not pass. Signed by 2 members: Representatives Priest and Schmick.

Staff: Serah Stetson (786-7109).

Background:

Administrative Procedure Act.

Washington's Administrative Procedure Act (APA) establishes procedures under which state agencies adopt rules and conduct adjudicative proceedings. The APA also sets out procedures for judicial and legislative review. Generally, a rule is any agency order, directive, or regulation of general applicability which: (1) subjects a person to a sanction if violated; or (2) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials. Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding a hearing.

Under the APA, the validity of any rule adopted by an agency may be challenged by a petition for declaratory judgment when it appears the rule or application of the rule interferes with or impairs the legal rights or privileges of the petitioner. The petitioner has the burden of demonstrating the invalidity of the rule. The court may declare a rule invalid only if it finds that the rule: (1) violates the Constitution; (2) exceeds the statutory authority of the agency; (3) was adopted without compliance with rule-making procedures; or (4) is arbitrary and capricious. The petition for declaratory judgment on the validity of an agency rule must be filed in Thurston County Superior Court.

Small Business Paperwork Violations.

In 2009 the Legislature enacted a law authorizing agencies to waive paperwork violations made by small businesses. Under that law, agencies must waive fines, civil penalties or administrative sanctions for first-time paperwork violations by a small business. A "small business" is defined as a business with 250 or fewer employees. When an agency issues a waiver, it may require the small business to correct the violation within a reasonable period of time and in a manner specified by the agency. If a correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties or sanctions.

A waiver may not be granted if the violation: presents a direct danger to public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to

human health or the environment, or causes serious harm to the public interest; involves knowing or willful conduct that may result in a felony conviction; concerns assessment or collection of any tax, debt, revenue or receipt; concerns a regulated entity's financial filings, or insurance rate or form filing; is by a business owner who previously committed a substantially similar paperwork violation; or conflicts with federal law or programs.

A paperwork violation is defined as a violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business.

Summary of Second Substitute Bill:

Agencies must provide a small business with a copy of the state law or agency rule being violated and must allow a period of at least two business days for the small business to correct the violation before the agency imposes a fine, a civil penalty, or an administrative sanction. If no correction is possible, no correction shall be required. Exceptions to this requirement include:

- a determination that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;
- the violation involves a small business that knowingly or willfully engaged in conduct that may result in a felony conviction;
- the requirement for a notification or waiver conflicts with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds, or requirements for eligibility of employers in this state for federal unemployment tax credits;
- the small business committing the violation previously violated the same or a similar law or agency rule; or
- the owner or operator of the small business previously violated the same or similar law or rule under a different small business.

The definition of a small business is changed from a business with 250 or fewer employees to a business that has 50 or fewer employees or has gross revenues of less than \$7 million annually as reported on its federal income tax return or its return filed with the Department of Revenue over the previous three consecutive years.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (State Government & Tribal Affairs):

(In support) This bill builds on the small business paperwork violations bill from last year. This is an opportunity to help small businesses succeed during a challenging economy. There are concerns about the bill, but agencies are committed to helping with the language of the bill.

Small businesses face higher costs for regulatory compliance than larger businesses. Small businesses should spend time building their business. This bill would benefit a number of businesses and similar policy has been adopted by the federal government. It is suggested that "48 hours" be changed to "two business days."

New businesses must become familiar with a number of rules and regulations and can be fined for regulations for which they were not familiar. This bill will result in a partnership between business and government. Most businesses would comply with regulations if they knew about them.

Businesses are struggling to keep the doors open, and paperwork is missed. Education versus penalization is important. The bill doesn't offer a free pass to repeat offenders.

(With concerns) The Department of Social and Health Services has concerns with the bill. If the exceptions put into the paperwork violations bill from last year are included in this bill, it should take care of any concerns.

The Department of Labor and Industries understands and supports the intent of the bill. However, as written there would be a significant fiscal impact to the workers compensation system. Language in the bill from last year would take care of these concerns.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill came out of a conference that explored ideas on how the state can help small business. This is complementary to a paperwork violations act that was passed last year. Agency concerns have been addressed in the bill. Washington has lost 163,000 jobs in the private sector since January 2008. This is an important small step that the state can provide to help small businesses who want to do the right thing. The exemptions are clear, so no one will be put in harm's way. When someone's trying to do the right thing, it is really important that the state comes along to help with a customer service focus.

(Opposed) None.

Persons Testifying (State Government & Tribal Affairs): (In support) Representative Smith, prime sponsor; Carl Gipson, Washington Policy Center; Gary Wray; and Patrick Connor, National Federation of Independent Business.

(With concerns) Carl Hammersburg, Department of Labor & Industries; and Joyce Stockwell, Department of Social & Health Services.

Persons Testifying (Ways & Means): Representative Smith, prime sponsor.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Affairs):
None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.